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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re J. M., a Person Coming Under the
Juvenile Court Law.

C068042

THE PEOPLE,

(Super. Ct. No.
JV130790)

Plaintiff and Respondent,

v.

J. M.,

Defendant and Appellant.

Juveniles who become enmeshed in the juvenile justice system are often not strangers to crime. But this is not a typical juvenile case. Here we are required to review the conduct of a young man who has led a largely exemplary life but, while driving a car purchased with his part-time job earnings, made a tragic mistake that led to the deaths of an elderly couple in a head-on collision.

The question is whether the trial court abused its discretion in denying the minor's motion to dismiss the petition where, as here, he has an unblemished record and is not in need

of the rehabilitative services provided by the juvenile justice system.

The minor was charged with two counts of misdemeanor vehicular manslaughter. The trial court sustained the petition and placed the minor on probation with various conditions, including an order to attend community college. The Attorney General agrees with the minor that this condition should be stricken, although the minor is presently enrolled in and committed to completing an EMT (emergency medical technician) program. On the record before us we cannot say the court abused its discretion. We strike the education condition and otherwise affirm the judgment.

FACTS

At 15, J. lived with his parents and three siblings. His biography, at least as far as it is represented in the record, reads like a script for the model teenager. He was a good student, worked at Safeway, had lots of friends, went to church, respected his parents, and had no record of disciplinary problems at school or with law enforcement. He took a driver's training program, obtained his learner's permit, practiced driving under a variety of conditions with adult drivers, and bought a used car before his 16th birthday.

In May 2009 J.'s father helped him find a 1998 Ford Contour at a small mom-and-pop dealership. They did not notice until after they had bought the car that the driver's seat was bolted onto the floor with a piece of wood. Within a short time the power windows malfunctioned. They replaced fuses three or four

times before the windows would operate properly. A gear in the steering column had been replaced with a remanufactured part. J. turned 16 about seven months before obtaining his driver's license. On one occasion the Contour "shut off on its own." There was no apparent reason that the car died.

Less than a month later, what every parent of a teenaged driver prays will never happen, happened. On June 5, J. spent the night at his aunt's house. He did not consume alcohol or drugs. He went to bed between 3:00 a.m. and 4:00 a.m. on June 6, but he did not get up until 11:00 or 11:30 a.m. He felt alert and rested. He ate breakfast and then drove to another cousin's house. He did not experience any problems with the car. As he was traveling northbound on South Watt Avenue about 3:00 p.m. en route back to his aunt's house to get ready for work, he testified he heard a loud popping sound, the steering wheel locked, and the car drifted into the southbound lane of traffic. He tried desperately to "jerk" the steering wheel to the right and hit the brakes, but he was unable to avoid a head-on collision with Mr. and Mrs. Thurlow. Although he did not believe he lost consciousness, the first thing he remembered after the collision was what felt like "waking up": there was blood in his mouth, the windows of his car were shattered, and his airbag had deployed. He called his mother on his cell phone, and as his parents drove to the hospital, they prayed that no one would die.

The Thurlows, who were in their early 80's, had moved to California from England to be closer to their adult daughters

and their three grandchildren. According to one of their daughters, they were extremely kind and generous people, and they helped their children financially, around the house, and with regularly driving one granddaughter to and from college. They both died as a result of the injuries they sustained in the accident.

J. was seriously injured, but he survived. In considerable pain, lying on a stretcher in the ambulance, J. told an interrogating California Highway Patrol officer that the steering wheel had locked and he veered into the oncoming lane despite jerking his steering wheel to the right. He gave the same account when the officer interviewed him again several days later at his home. He does not recall telling a police officer that he was looking at the lane ahead of him and was not paying attention for a few seconds.

The prosecution called a mechanic to testify as an expert witness. A former Ford employee, the mechanic had been employed by the California Highway Patrol a short time before the collision as part of an accident investigation team. He noted damage to steering column components but opined that the damage he observed must have happened during the collision because the car would not have been drivable. Additionally, he observed a fracture of an aluminum housing but concluded that because the fracture was free of grime and dirt, it must have occurred during the accident. He concluded there were no mechanical deficiencies in the steering system that could have caused the fatal collision.

The prosecutor argued that driver inattention and inexperience, rather than any mechanical defect, caused the accident. She pointed out that the collision occurred on a slight curve.

The trial court found J. committed two counts of misdemeanor vehicular manslaughter as alleged. The court explained: "It appears that the only plausible reason for veering over the line would be a mechanical defect, if it existed. [J.'s] testimony to that effect as I've indicated seems implausible in light of the rest of the evidence. The physical examination rebuts the defense of a mechanical defect. The examination showed no evidence of a preexisting defect, and it seems inescapable that [J.] drove the vehicle across the dividing line without the benefit of some independent intervening cause to explain it."

In heart-rending statements, both father and son accepted responsibility for the accident and expressed profound sorrow for the victims' family.

J. moved to dismiss the petition pursuant to section 782 of the Welfare and Institutions Code. Section 782 provides: "A judge of the juvenile court in which a petition was filed, at any time before the minor reaches the age of 21 years, may dismiss the petition or may set aside the findings and dismiss the petition if the court finds that the interests of justice and the welfare of the minor require such dismissal or if it finds that the minor is not in need of treatment or rehabilitation. The court shall have jurisdiction to order such

dismissal or setting aside of the findings and dismissal regardless of whether the minor is, at the time of such order, a ward or dependent child of the court."

Although the court found that J. "is substantially in less need of rehabilitative treatment" than "most of the people for whom [Welfare and Institutions Code section] 602 petitions are sustained," it denied the motion to dismiss. The court explained, "[t]hat doesn't mean, however, that he's completely -- that there's no need for treatment and rehabilitation. . . . [¶] So I find that [J.] is in need of some form of rehabilitation and treatment and that the jurisdiction of the juvenile court is entirely appropriate."

J. timely filed a notice of appeal.

DISCUSSION

Both the minor and the Attorney General agree that the scope of appellate review is quite limited. In order to reverse the trial court's denial of the motion to dismiss, we must find an abuse of discretion. (*V.C. v. Superior Court* (2009) 173 Cal.App.4th 1455, disapproved on other grounds in *In re Greg F.* (2012) 55 Cal.4th 393, 415; *Derek L. v. Superior Court* (1982) 137 Cal.App.3d 228, 232, 234 (*Derek L.*).) J. contends the trial court abused its discretion because there is no evidence that he is in need of the rehabilitative services provided by the juvenile justice system.

No one assails J.'s character. To be sure, the record discloses that he has a promising future based on his hard work, his remorse, and his integrity. He clearly did not intend to

harm anyone, and he has obtained psychological services to help him deal with the overwhelming grief he felt following the accident. He completed high school and enrolled in a full time EMT course. He is gainfully employed. Indeed, the trial judge, who was new to the juvenile court bench, acknowledged that J. was in less need of any rehabilitative services than most of the juveniles who are declared wards of the court.

It is true that one of the primary purposes of the juvenile justice system is to rehabilitate young offenders. (*In re Nan P.* (1991) 230 Cal.App.3d 751, 758.) J. insists he is not in need of rehabilitation and therefore the trial court abused its discretion by maintaining jurisdiction over him. But Welfare and Institutions Code section 782 allows a court to dismiss a petition in the "interests of justice." "Thus, the juvenile court is not only authorized, but obligated, in carrying out its duties under the Juvenile Court Law, to weigh and consider both the interests of the juvenile and the interests of society. The clear parallel with those joint obligations in criminal court proceedings persuades us that a dismissal which is not 'in furtherance of justice' in an adult criminal proceeding is unlikely to be 'in the interests of justice' in juvenile court." (*Derek L.*, *supra*, 137 Cal.App.3d at p. 233.)

Arguably, it is highly unlikely that a 16 year old, just regaining consciousness, writhing in pain, and responding to questions by a police officer in the back of the ambulance, would have had the wherewithal and savvy to concoct the story that his steering wheel had locked and he jerked the car to the

right to avoid the accident. Indeed, there was corroborating evidence that the used car had an electrical defect. But we are not the finder of fact and we cannot substitute our judgment for the judgment of the trial court. (*People v. Carmony* (2004) 33 Cal.4th 367, 376-377.) Our review remains exceedingly deferential.

J., of course, does not need to be reminded that two innocent people died in the accident. And the trial court, based on the testimony of the mechanic, rejected J.'s defense that a mechanical defect, rather than inattention, caused the collision. Certainly there is substantial evidence to support the trial court's finding. The Thurlows' children were devastated by the loss of their parents and grandparents. Thus, the court properly took into account the public interest as well as the interest of the minor involved. We cannot say that retaining jurisdiction over a young driver who caused the death of two people is arbitrary and capricious.

The propriety of the disposition, other than one of the conditions of probation, is not before us. Yet we agree with the Attorney General's observation that the ultimate result in this case was measured. By retaining jurisdiction, the court could oversee restitution to the victims' daughters, J.'s community service, and a fine. J. does not suggest that any of these conditions were inappropriate given the nature of the loss. While they may or may not advance any rehabilitation, we must conclude that the trial court did not abuse its discretion by taking into consideration the gravity of the offenses, the

interest of the victims, and the need to insist that J. answer to society by performing community service and remaining under the supervision of probation.

The court did, however, impose a probation condition that J. "remain enrolled in a fully accredited community college or four-year college at least six hours a semester until you complete at least an associate's degree level." J. contends that this condition is inconsistent with Welfare and Institutions Code section 726, subdivision (b)(1). The Attorney General agrees.

Section 726 of the Welfare and Institutions Code provides that a responsible adult must be appointed to make educational choices on behalf of a ward until the age of 18, at which time the power to make those choices reverts back to the ward. Thus, section 726 limits the discretion of the trial court to impose educational conditions of probation. We accept the Attorney General's concession to strike probation condition No. 4a.

DISPOSITION

Probation condition No. 4a is stricken. In all other respects, the judgment is affirmed.

We concur: RAYE, P. J.

HULL, J.

BUTZ, J.